

# Constructive Dismissal

## What is Constructive Dismissal?

Constructive Dismissal occurs when an employee terminates their employment, as a result of their employer's conduct towards them. Although the employee has resigned the effects are the same as if they were dismissed and they may therefore be able to bring a claim.

There are also certain issues which must be considered before making a claim. For example:

- The employer may be in a position to prove that their action was justified or reasonable. For example, the employee may have breached the terms of their contract of employment.
- The employee may have to indicate why the usual grievance procedures were not followed.
- To pursue a claim for Constructive Dismissal an employee must usually leave their employment within a reasonable time of the actions complained of, or the contract could be construed as having been affirmed.
- The employer's breach must be of more than a minor nature.
- The employee must also be able to meet the qualifying criteria for unfair dismissal before they can bring a constructive dismissal claim unless a statutory exception applies. The employee should give this some considerable thought before resigning. Advice should be ideally sought.

## Examples of action which may give rise to a claim for Constructive Dismissal

- a reduction of pay without the employee's consent
- change to hours of work without authority to do so
- demotion for no justifiable reason
- other fundamental changes to the nature of the employee's job
- bullying, harassment or violence by the employer or work colleagues
- making the employee work in dangerous conditions

The employer's breach of contract may be one serious incident or the last in a series of less important incidents that are serious when taken together.

Resigning is a decision which should never be taken lightly as it may be very difficult to prove that the employer's behavior was so bad that you had no choice but to leave. Legal advice should always be obtained before making that decision.

The above information is not intended to be a complete or definitive statement of the law. For more information or advice please contact our Employment Law team.